ask Force Report:

Organized Crime

Missouri Task Force on Organized Crime
Proposed and Administered by the Office of
Attorney General John C. Danforth

REPORT

of the

MISSOURI TASK FORCE ON ORGANIZED CRIME

EXPLANATORY NOTE

Beginning in August 1968, Governor Warren E. Hearnes established the Missouri Law Enforcement Assistance Council to administer the Safe Streets Act program for our state under the Law Enforcement Assistance Administration in the U.S. Department of Justice. The Council has since begun many programs to improve the Missouri justice system of police, courts, corrections and juvenile services.

To assist in developing programs to combat the problems of organized crime as they might exist in our state, the Missouri Law Enforcement Assistance Council in 1969 funded a Task Force, substantially as recommended by Attorney General John C. Danforth, a Council member. Its goals were to investigate the extent of organized crime in Missouri and suggest approaches for solutions to the problems which were found. The survey is one part of the Council's overall program to upgrade the Missouri justice system and reduce crime and delinquency.

This document is the result of the Task Force efforts, whose members are listed in the body of their report. A minority report on two of the Task Force recommendations for action is also included.

Publication of this report has been authorized by the Council Chairman. However, while the Council has received the report, as they have all others from various task forces and committees, it is currently still undergoing review by its staff and consultant. Therefore, its release at this point indicates neither approval nor disapproval by the Missouri Law Enforcement Assistance Council and its members, of either the majority or minority findings.

It is hoped that distribution of this document will increase public awareness of the extent of organized criminal activity in Missouri, and the need for intelligent programs to fight it.

William L. Culver
Executive Director
Missouri Law Enforcement
Assistance Council

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Purpose

During the past 20 years, Americans have become increasingly aware that highly organized groups of criminals are operating throughout the United States for the purpose of promoting illegal goods and services for power and profit. Gambling, narcotics, prostitution, labor racketeering, corruption of public officials and infiltration of business to further these ends are but a few of the various activities of organized crime.

In 1967, the President's Commission on Law Enforcement and Administration of Justice Task Force on Organized Crime published its report and listed Missouri as one of 17 states having active organized crime within its borders. Increasing concern about these illegal activities in Missouri has resulted in the formation of the Missouri Task Force on Organized Crime (MTFOC). Administered by Attorney General John C. Danforth, MTFOC has conducted a year-long study of organized crime for two purposes: first, to determine to what extent organized crime exists in Missouri, and, second, using this information as a basis, to recommend concrete steps to be taken in order to provide Missouri with the statutory and administrative tools to better deal with this growing problem.

The MTFOC was administered by Frederick H. Mayer and David Hess. Other members of the MTFOC were, as follows:

Daniel Bartlett, United States Attorney
Calvin K. Hamilton, former United States Attorney
Veryl Riddle, former United States Attorney
F. Russell Millin, former United States Attorney
Gene McNary, Prosecuting Attorney of St. Louis County
Joseph Teasdale, Prosecuting Attorney of Jackson County
Senator A. M. Spradling, Legislator
Representative J. Anthony Dill, Legislator
John C. Danforth, Attorney General of Missouri
Alfred Sikes, Assistant Attorney General
Captain James Hitchcock, Kansas City Police Department
Captain Earl Halveland, St. Louis Police Department
Lieutenant C. C. Maddox, Missouri State Highway Patrol

Listed below is a summary of findings and recommendations of MTFOC.

Synopsis of Findings and Recommendations

I. The Extent of Organized Crime in Missouri

1. The national crime syndicate **does** operate in both St. Louis and Kansas City, although not on as large a scale as in such urban centers as New York City, Chicago and Detroit.
2. Three criminal factions are presently cooperating in illegal activities in the St. Louis area. They are engaged in labor racketeering, gambling, infiltration of legitimate business, loan sharking and narcotics.

3. Organized crime in Kansas City is more active than in St. Louis because it is closely allied with the highly developed Chicago organization. Illegal activities in Kansas City include gambling, buying and receiving stolen property, infiltration of legitimate business and narcotics.
4. There are strong indications that well-planned burglaries and thefts in outstate and rural Missouri can be directly traced to organized crime groups in the urban areas.
5. Due mainly to lack of manpower and resources caused by an inadequate tax base, many rural Missouri communities are experiencing an alarming increase in crime.
6. Because the police intelligence units of St. Louis, St. Louis County, Kansas City and the Missouri State Highway Patrol are all undermanned, it is virtually impossible to effectively investigate and prosecute organized crime activities throughout the State.
7. "Crime-in-the-Streets" has a definite, direct relationship to organized crime. If the corrosiveness of dope peddling, gambling and the other organized criminal activities cannot be controlled, the frustrations of the exploited can only explode into angry violence. If the power of the syndicate cannot be broken, the price is loss of confidence in government and a concomitant lack of respect for the laws which enable us to live collectively in peace and dignity.
8. Organized crime shoulders no tax burden, thereby creating inequities that fall on the law-abiding citizen and taxpayer.

9. Organized crime and its related activities have an adverse effect on the consumer price index and indirectly increase the prices of most of the products which consumers buy.

II. Recommendations to Provide Statutory and Administrative Tools to Better Deal With Problems Outlined Above.

1. Missouri Bureau of Investigation — A special investigating body should be established under the direction of the Attorney General. This special unit should include persons skilled in specialized areas of investigative work and through an organizational overlapping would work closely with the St. Louis and Kansas City police departments' intelligence units and the Missouri State Highway Patrol.

2. Felony Conspiracy Statute — The proposed statute would make it a felony for two or more persons to conspire to commit an offense, punishable under the laws of the State of Missouri as a felony.

3. Electronic Surveillance Statute — The proposed statute would allow wiretapping and oral interception in connection with organized criminal activities and serious criminal activities after obtaining a court order authorizing the tap. A showing of probable cause would be required in order to obtain court approval and severe penalties would be provided in case of illegal wiretapping.

4. Witness Immunity Statute — The proposed statute would provide that a person could be provided immunity from having his testimony used against him. If the court grants the request for immunity, the witness would be prohibited from refusing to testify on the basis of the Fifth Amendment.

5. Loan Sharking Statute — The Uniform Consumer Credit Code as amended by the Interim Legislative Committee studying same is recommended as an effective weapon against loan sharking and the juice racket.

6. Extortion Statute — The elements of the crime of extortion are presently contained in the robbery, third degree statute (Section 560.130, RS Mo), and is proposed that this statute be retitled "Extortion" to clarify the legal tools available in fighting organized crime.

I. WHAT IS ORGANIZED CRIME?

A. Definition

Organized crime has been defined as a self-perpetuating criminal conspiracy for power and profit, utilizing fear and corruption and seeking to obtain immunity from the law.[1]

B. It is National in Scope

As reported by the Kefauver Committee almost twenty years ago, organized crime is national in scope, existing mainly in metropolitan areas under group leadership. It was reported that the Mafia or La Cosa Nostra, perhaps the best known and most powerful of the crime syndicates, serves as the cementing agent for the New York, Chicago, Newark, Miami and Detroit crime organizations. These, in turn, have ties with organized crime in other urban areas.

Since then, there have been several incidents backing up the Kefauver Committee's disclosure. Among these were the infamous meetinf of organized crime's top brass in 1957 at Apalachin, New York, and the public disclosure about organized crime by one of its members; Joseph Valachi.

The domination of organized crime is based fundamentally on **muscle and murder.** The organized crime syndicate is a secret conspiracy against law and order which will ruthlessly eliminate anyone who stands in the way of its success in any criminal enterprise in which it is interested. It will destroy anyone who betrays its secrets. It will use any means available, political influence, bribery, intimidation, etc., to defeat any attempt on the part of law enforcement to touch its top figures, or to interfere with its operation.

In addition, FBI Director J. Edgar Hoover has stated to the House Appropriations' Sub-Committee in 1966:

> "La Cosa Nostra is the largest organization of the criminal underworld in this country, very closely organized and strictly disciplined. They have commited almost every crime under the sun . . . "

Traditional activities of organized crime include supplying of illegal goods and services, such as, gambling, loan sharking, narcotics, prostitution[2] and fencing of stolen property. As pointed out later in this report, many "crime-in-the-streets" offenses can be directly attributed to the organized element.

Millions of Americans are affected by organized crime even though they do not realize it exists. The price of a foodstuff may be directly related to a particular labor cost which in turn is increased by some control by organized crime. The neighborhood grocer may be compelled to purchase high-cost insurance which will be reflected in consumer prices. "Sweetheart" contracts between hoodlum-infiltrated labor unions and corrupt businessmen increase the price the average citizen must pay for goods, merchandise and services.

Aside from the inherent evil and direct costs and losses which arise from the activities of organized crime, the failure of these syndicates to pay federal, state and local taxes on both their illegal and legal incomes result in proportionately higher taxes for all honest taxpayers.

Growing drug addiction, a higher rate of crime-in-the-street and the overall demoralization of the poor communities are the grim by-products of one of the most successful "business combinations" in the history of this country!

C. Other Criminal Organizations

1. Local Gangs

While the organized crime syndicate is certainly the largest and best known organized criminal element, it is by no means the only one. There are local organizations throughout the nation that would certainly fall within the definition of organized crime. These groups, numerous and varied, may be based upon the ethnic or racial ties or be

simply the result of a particular criminal endeavor.

A ring of twenty-year-old burglars in St. Louis County or eighteen-year-old car thieves in Kansas City may not be considered organized crime when studied by a Senate committee, but their operations are definitely organized.

At present, the burglary rate in St. Louis County is at an all-time high and continuing to climb. The law enforcement officials there readily admit the presence of organized gangs. By staying together, pooling their ideas and manpower, these gangs are able to use new techniques and innovations that make apprenhension extremely difficult.

It is not uncommon today for a lookout man in a burglary to have a walkie-talkie enabling him to be in constant communication with his partners who are ransacking a home. They carefully study the neighborhoods and habits of their intended victims, check mail depositories for accumulations, consult newspaper obituaries to determine when and where families will be away from home.

They are even extremely discriminating about the items they take, such as, valuable furs, silver, jewelry, office machines and equipment, cash and other easily disposable and hard-to-identify items. Rarely is a member of a burglary ring apprehended due to disposing of his stolen property. Organization exists to the point where it is known

in advance what items have a market, which will be easy to dispose of, and what can be expected from their sale. Auto theft rings and organized gangs or armed robbers will continue to prey upon the citizens of this State until law enforcement agencies are provided with the new or revised legislation recommended by this Task Force.

D. Types of Organized Criminal Activities

1. Gambling

Illegal gambling is the principal source of income for organized crime in the nation.[3] It is a multi-**billion** dollar "business" which ranges from lotteries, such as, numbers and policy, to off-track horse betting and wagering on other sporting events. Estimates of the annual income generated nationally by illegal gambling have varied from **$7 to $50 billion.**[4]

Organization-controlled gambling operations are not confined to the affluent. They also reach into ghetto and slum areas and the proceeds taken from people there actually deprive them of money that is needed to maintain their already meager existence. The odds of winning in the numbers racket, the most common form of gambling in the ghetto, are something like one in a thousand! While much of the slum area gambling may have been initiated by the small and independent operator, he may be forced to seek assistance from organized crime. Only the syndicate has the resources to sup-

ply odds and the financial stability to accept large wagers and to withstand occasional sizable losses.

2. **Loan Sharking**

The lending of money at exorbitant rates of interest, commonly known as "loan sharking" or "the juice racket," is estimated to be the second largest source of revenue for organized crime,[5] also in the multi-**billion** dollar range.[6] Loan sharking is particularly effective during a period of tight money, such as the nation has been experiencing the past few years. When normal credit channels are closed or restricted, many individuals are forced into positions of securing credit regardless of interest rates.

When the payments on such loans become delinquent, the victims are often threatened, beaten, or maimed as a reminder that subsequent payments shall be made on schedule and as a warning to other possible delinquents. Once within the grasp of the loan shark, the victim is caught in a never-ending spiral of increasing interest rates. Some unfortunate businessmen who have turned to loan sharks for credit pay with their companies' assets or by forced sale of the company to the loan shark.

3. **Narcotics**

The President's Commission on Law Enforcement and Administration of Justice Task Force on Organized Crime Report points out:

> "The sale of narcotics is organized like a legitimate importing, wholesaling-retailing business. The distribution of heroin, for example, requires movement of the drug through four or five levels between the importer and the street peddler.
>
> "Many law enforcement officials believe that the severity of mandatory federal narcotics penalties has caused organized criminals to restrict their activities to importing and wholesaling distribution. They stay away from smaller scale wholesale transactions or dealing at the retail level. Transactions with addicts are handled with independent narcotic pushers using drugs imported by organized crime.
>
> "The large amounts of cash and the international connections necessary for large, long-term heroin supplies can be provided only by organized crime.
>
> "Conservative estimates . . . indicate that the gross heroin trade is $350 million annually, of which $21 million are probably profits to the importer and distributor. Most of this profit goes to organized crime groups in those cities in which almost all heroin consumption occurs."

4. **Labor Racketeering**

Infiltration of labor unions by organized crime has led to extortion through threats of possible labor strife. Trucking, construction and waterfront shipping entrepreneurs, in

return for "insurance" that business operations will not be interrupted by labor discord, allow gambling, loan sharking and pilferage on company property. In other cases, control of labor supply by organized crime prevents unionization of some industries.[7]

5. Infiltration of Legitimate Business

Entry into legitimate business accomplishes many goals for those in organized crime, some of which are:

(a) Acquisition of respectability not otherwise attained.
(b) Establishment of sources of funds that appear to be legitimately gained.

Organized crime generally obtains control of business through one of four methods:

(a) Investing concealed profits acquired from gambling and other illegal activities.
(b) Accepting business interests in payment of the owner's gambling debts.
(c) Foreclosing on usurious loans.
(d) Using various forms of extortion.

When organized criminals gain control of legitimate businesses, they resort to varied tactics to gain quick profits or to drive competitors out of business.

For instance, a criminal group may take over a legitimate business with the sole intent of gaining a quick profit. Retaining the original owners in nominal management positions, extensive product orders are then placed through established lines of credit.

These goods are immediately sold at low prices before the suppliers are paid, and then the organization pockets the profits and places the firm in bankruptcy without paying the suppliers.

Or, to establish a monopoly, organized crime may preserve their business' non-union status and use cash reserves to offset temporary losses incurred when the criminal group lowers prices to drive competitors out of business. But when the purpose has been achieved, the organized criminals push their prices far above what they had been before being lowered.

The ordinary businessman is no match for organized crime, which has a practically bottomless supply of revenue from its gambling and other illegal operations, on which little or no taxes are paid. Organized crime either prevents unionization or obtains "sweetheart" contracts from existing unions.

These tactics, together with strong-arm methods and numerous other ways used by organized crime, are combined to form an unfair, unbeatable force.

6. Corruption of the Law Enforcement System

Organized crime functions as an illegal, invisible government. Its political objective is the nullification of legally-established government. It has a history of bribery of policemen, police chiefs, prosecutors, judges, politicians and anyone else who might help tamper with law enforcement processes to

the mob's benefit. Former Chief Justice of the United States Earl Warren, like everyone else who is experienced with organized crime, believes that the basic problem of this menace is that of political corruption.

Ralph Salerno, formerly of the New York City Police Department and a recognized authority on organized crime and author of **The Crime Confederation,** recently stated that on the national level organized crime spends an estimated two **billion dollars** a year from gambling revenues to corrupt public officials and law enforcers.

In the same way that gambling proceeds provide funds for corrupting public officials, narcotic profits have also been used to insure protection from law enforcement officials. A case in point is that of two former federal narcotics agents stationed in St. Louis. One agent was the top "street man" in St. Louis for the federal government for three years. The two agents were arrested on December 26, 1969, on charges of having solicited a $50,000 bribe from two narcotics smugglers seeking to escape a prison sentence. The arrest of the two agents came in North Carolina when they allegedly tried to collect the balance of the bribe after an earlier payment to them of $20,000.

7. Organized Crime and Crime-in-the-Streets

Milton Rector, the Director of the National Council on Crime and Delinquency, has said, "Almost every bit of crime has some link to organized crime."[8]

The MTFOC is also convinced that many street crimes are directly connected to organized crime. "Crime-in-the-streets," namely, robberies, muggings, purse snatchings, thefts from interstate shipments, prostitution, shop lifting and thefts from automobiles, can be directly attributed to narcotic addicts who attempt to secure enough money to satisfy their drug habit. Law enforcement officials in St. Louis and Kansas City estimate that in some instances some drug habits run as high as $100 to $150 a day. Addicts of this type have no other place to turn other than the criminal activities described above. Curtailment of illegal drug sale and use alone would drastically reduce "crime-in-the-streets" presently plaguing all metropolitan areas. Of course, some street crimes can also be directly connected to the need for money produced by gambling and borrowing from loan sharks.

Hence, as organized crime continues to grow, so will crime-in-the-streets continue to grow.

Organized crime, while not normally engaged in the day-to-day commission of burglaries and robberies are directly connected with such crimes. By reason of the knowledge and influence that accompanies the power organization, it is in a position to provide plans and advice to the perpetrators of major thefts. Once successfully completed, the organization is able to provide a handy funnel for the disposal of the stolen mer-

chandise. The organization reaps the "middleman's" profit while suffering little, if any, exposure to a risk. The recent rash of post office burglaries is evidence of the foregoing in that large quantities of stamps are "fenced" in markets as far away as New York. Authorities have little doubt that the thieves are getting help, organization help, in the disposal of this merchandise. The underworld of tomorrow is composed of the juvenile gangs of today. The adult gangster is nothing more than the adolescent who has grown up — physically.

A striking example of organized crime's relationship to juvenile crime was shown in an article appearing in **The New York Times** in 1960. The article described a Brooklyn crime school for youthful apprentices. The school had been uncovered during a large-scale police raid against a "Junior Apalachin" syndicate. At least one boy had been killed in gangland style by the syndicate as an object lesson for any would-be informers. The raid led to the arrest of 22 persons accused of carrying out a series of burglaries during the previous two years, yielding an estimated total loot of $500,000. The burglary ring school was described as a tryout organization under the tutelage of established mobsters who, the police chief said, offered education in murder as well as theft.

From a ghetto youngster's point of view, what does he see in organized crime? This was answered in a speech by Oliver Lofton, of the United States Department of Justice,

in March of 1970. "Crime is seen as an easy road to the good life and the only way to acquire status," he said. "The idols of the ghetto children are the big men on the street. They are well-fed, well-dressed, own big cars and are members of the ghetto who have made it and have status . . . for all intents and purposes, the resident organized crime operators are living examples — real-life models — of the kind of success the ghetto provides.

'A recent study of youthful offenders from three Chicago neighborhoods reflects that, when asked: 'What is the occupation of the adult in your neighborhood whom you most want to be like in ten years?' — eight out of ten named some aspect of organized crime," said Lofton.

Our society appears as if it is becoming paranoiac over the thought of crime-in-the-streets, particularly crimes of violence. But the general public does not fear gamblers, corruptors of unions and dealers of vice and prostitution.

To suburbia, the violence associated in the popular mythology with organized crime does not concern them. After all, "gangsters only kill other gangsters." The truth is that organized crime is one of the most pervasive and corrosive forces in our society, particularly in our cities where it plays a role in the street crime which is feared so much by the general public.

If organized crime cannot be controlled, the frustrations of the exploited can only explode into angry violence. If its power to corrupt cannot be broken, the price is the loss of confidence in government.

II. ORGANIZED CRIME IN MISSOURI

The President's Commission Task Force on Organized Crime disclosed in its report the operation of organized crime in these seventeen states:

Arizona	Massachusetts	Ohio
California	Michigan	Pennsylvania
Colorado	Missouri	Rhode Island
Florida	Nevada	Texas
Illinois	New Jersey	Wisconsin
Louisiana	New York	

The President's Commission Task Force report was made after an extensive two-year study and was the result of an exhaustive review of investigative reports, interviews and hearings.

In the Spring of 1970, the federal government sent a federal strike force of attorneys and criminal investigators from the Department of Justice to St. Louis and Kansas City to investigate and prosecute organized crime. From this it is apparent that the U.S. Department of Justice has sufficient information on organized crime in Missouri to justify the expenditure of the time, resources and manpower represented by its strike force.

From September, 1969, to September, 1970, the Missouri Task Force on Organized Crime reviewed the past and present history of criminal activity in the State of Missouri. It has obtained information from its members who are presently engaged in law enforcement. It has reviewed investigative reports and has examined the transcripts of official hearings on organized crime. In addition, this Task Force has called upon the personal experience of its members, all of whom have been engaged in law enforcement at some time.

To fully round out the study, staff investigators interviewed police officials, prosecuting officials, legislators and national authorities in the field of organized crime.* They have studied investigative reports of various law enforcement agencies and have performed extensive research in published studies on this subject. In addition, the staff investigators have studied the programs designed to combat organized crime instituted in other states and have interviewed personnel of operating units established for that purpose.

The MTFOC has concluded, based on full analysis and evaluation of all data gathered, that present organized criminal activities in the State of Missouri warrant very serious concern. While Missouri may not have the magnitude of organized crime which exists in certain areas of New York, Michigan, New Jersey and Illinois, it does have a serious problem.

*Kansas City Metropolitan Police Department
St. Louis Metropolitan Police Department
St. Louis County Police Department
Federal Bureau of Investigation
Bureau of Narcotics and Dangerous Drugs
Department of Alcohol, Tobacco and Firearms Tax
Internal Revenue Service
United States Attorneys Office (Kansas City and St. Louis)
Department of Labor
Kansas City Crime Commission
United States Postal Inspector Offices
Missouri State Highway Patrol
Various sheriffs, prosecuting attorneys and police chiefs

The MTFOC has found criminal activity in the two major metropolitan areas in Missouri which clearly falls within the accepted definition of organized crime. These actvities also follow, **very closely,** the proven and established patterns of the powerful syndicate "families" in the eastern section of the United States.

A. **St. Louis**

As of this writing, there are three criminal factions operating in the St. Louis area. Two of the factions will be referred to in this report as faction number one and faction number two. Faction number one has close ties with the syndicate in Detroit. Faction number two and the remnants of the East St. Louis gang of the late Frank "Buster" Wortman (now active in a few labor unions) comprise the rest of organized crime in the St. Louis area. These three factions are attempting to operate in a peaceful co-existence, with a well-defined understanding as to each faction's territory and jurisdiction.

Law enforcement officials have said that the two St. Louis factions plus the Wortman element actually conspire together. This view is reenforced by the makeup of personnel employed in the construction of the new Poplar Street Bridge and the Gateway Army Ammunition Plant. Workers employed on both jobs were known members of all three factions.

Both construction operations, particularly the latter, received nationwide publicity concerning the labor strife, kickbacks, featherbedding, on-job gambling, violence and extortion which ran rampant there.

Further evidence of the past and present existence of organized crime in the greater St. Louis area is attested to by a review of the police files on unsolved gangland killings:

Elmer "Dutch" Bowling, chief lieutenant for the late rackets' boss, Frank "Buster" Wortman, and his muscleman, Melvin Beckman, were murdered in 1962.

John R. Stengele, 40-year-old Belleville juke box operator, was shot on October 19, 1961. Before he died, he told police he thought the juke box rivalry was responsible for his being gunned down.

Richard S. Hannon, 57, a notorious safecracker and burglar was fatally shot in 1961. Gunmen pursued his automobile on Chambers Road near Riverview Boulevard and pumped five bullets into his head.

Robert L. Brown was murdered on January 24, 1956. He was a St. Louis attorney and parliamentarian for the Board of Aldermen. It is believed that he was killed to gain control of his cigarette vending business.

J. Fred Koenig, East St. Louis handbook operator; Bobby Carr, former St. Louis taxicab driver; John P. Schook and his brother, Paul J. Schook; William Kuna, Robert Burbank, and George "Stormy" Harvill were all murdered because of alleged illegal activities that ran counter to organized crime in St. Louis.

1. **Faction Number One**

This St. Louis organized crime faction is a loosely-knit but highly functional organization, engaged in both illegitimate and legitimate activities. Since the prohibition era, it has maintained strong ties with its Detroit counterpart. Many members of the Detroit syndicate were born and raised in St. Louis. Authorities are aware of at least one instance in which the Detroit syndicate came to the rescue of their St. Louis counterparts when the local handbook operation had a major financial setback. Law enforcement officials believe that various associations between organized crime families of the two cities are still maintained.

Faction Number One is headed by Tony Giardano and his next-in-command, John Vitale. Both convicted felons, they have had more than 50 arrests each, ranging all the way from suspicion of murder to evasion of federal taxes.

This faction, lie most "families," depends on gambling as its main source of income. The operation is primarily in the north and northwest areas of St. Louis. They have also dealt in the disposal of stolen property, but the exact extent of their "fencing" operation has not been determined.

Legitimate businesses infiltrated by Faction Number One include a banana company, controlled by Giardano, and a trucking company engaged in local distribution of produce, controlled by Vitale. Both claim

they have no interest in a novelty company, even though the main owner of this company is a former employee of the novelty company in the days when it was publicly known to be controlled by Faction Number One. Also as discussed later in this report, it appears that the Faction Number One has infiltrated the Metropolitan Towing Company.

2. **Faction Number Two**

The current and long-time head of faction Number Two is James "Jimmy" Michaels, aging but still much feared. In the late 1920's, the ex-Cuckoo gangster was one of a group of hoodlums that engaged in a bloody gun battle against a gang called the old "Green Ones".

Henry E. Petersen, a top U.S. Justice Department official, once said that Michaels was much like Meyer Lansky. Lansky is known by the Justice Department to represent the gambling interests of five "families" in New York City, Chicago, Philadelphia, Detroit and Buffalo.

Faction Number Two has engaged in large-scale gambling operations on the south side of St. Louis City and St. Louis County. These include handbook operations and at least one high-stake dice game. Several years ago, their gambling operation was moved to the second floor over a south St. Louis tavern. But before the operation was set up, an extensive remodeling job was done for security purposes. Upon comple-

tion, the second floor was secured by steel doors, making the area practically impregnable.

Faction Number Two will engage in violence and murder when the time and situation warrant. St. Louis has witnessed two recent gangland-style murders, both connected to a prior killing of a Faction Number Two family member.

At this writing, there are strong indications of an alliance between the forces of factions one and two. Tony Giammanco, a high-ranking member of Faction Number One and former bodyguard of Tony Giardano, was frequently seen at the site of Faction Number Two's gambling operation.

Reciprocity is enjoyed by each faction in securing employment on construction jobs through unions known to be influenced by one of the other factions. As is true of faction Number One, Faction Number Two has made its way into legitimate businesses. For instance, James Michaels' brother, Gus, operates a trucking firm, and Jimmy Michaels, Jr., himself a former convict and son of James, runs a construction firm. The construction firm was successful in its bid for work on the St. Louis Gateway Arch.

Through Faction Number Two's influence, one of James Michaels' brothers was employed in a political patronage job in St. Louis City Hall. He was later discharged after being arrested for bookmaking activities.

3. Labor Racketeering

Labor racketeering is a serious organized crime problem in the St. Louis metropolitan area. This is the consensus of officials in all the law enforcement agencies interviewed by MTFOC. (It is not the intent of this report to give the impression that **all** or even a substantial percentage of labor in the St. Louis area is dominated by organized crime. This is definitely not the case. The fact is that there has been significant infiltration by all three criminal factions of St. Louis into various labor organizations so as to be a serious cause for concern.)

For example, police estimate that about thirty tough young hoodlums, many of whom are ex-convicts, are members of a St. Louis union local and are used for enforcing any jurisdictional dispute that may arise with other unions and employers.

According to informed sources, the Gateway Army Ammunition Plant construction job was plagued with union featherbedding, ghost payrolling, work slowdowns, phony overtime and virtually every kind of on-the-job chicanery known to man. The local which had its members working there is one of the unions which has been heavily penetrated by all three factions. This ran the cost of the construction project $14 million above the expected cost of the project.

A relative of a member of Faction Number One from Detroit switched his residence to St. Louis, and shortly thereafter was

made business agent for a St. Louis local, which is one of the most desirable positions in labor. He is a close relative of one of the top St. Louis Faction Number One leaders.

Likewise, a close relative of Michaels, the Faction Number Two leader, has become the business agent for another St. Louis local.

Infiltration of labor, even when confined to a few locals, has worked a hardship on the rank-and-file members of those unions. **When work is scarce, the "organization" man is given preference because of and only because of his organizational ties.**

4. **Gambling**

The main gambling activities in the St. Louis area are handbooks which take bets on a variety of sporting events, dice games and the policy or numbers racket. For the most part, the handbooks and dice games are dominated by factions one and two.

For years the numbers (or policy) racket in St. Louis has been a source of income to local independent organizations operated and controlled by the game's "owner." Played almost exclusively in the black communities and ghetto areas, it takes dime, quarter and half-dollar bets on number combinations. Individuals, many already dependent upon welfare for substance, are submerged deeper into the throes of poverty as a result of losses at policy.

In **every** instance, members of organized crime's hierarchy are insulated from the street operations by three or four levels, making arrests and prosecution of syndicate members virtually impossible. This same pattern of insulation also prevails with the horse-racing and athletic-contest handbooks. Bets may be placed with the local news vendor, bartender, barber, doorman, and even an enterprising housewife; but these individuals are merely, in essence — and many times unknowingly on their parts — "employees" of organized crime.

Arrests and prosecution invariably are brought against the local bookie or policy writer — but the key operators of the gambling rackets are seldom, if ever, discovered. Hence, the operation is never dealt a mortal blow, since organization men are not brought to justice.

Gambling is also an avenue to other fields of crime. Losing players, unable to afford their setbacks, often turn to theft. One logical place to fence or to obtain information for fencing stolen property is with the people who accepted their bets which put them in their financial predicament originally.

Many of the policy players are narcotic addicts gambling to finance their habit. Their losses, plus the expense of their addiction, turn them to theft and other crimes.

5. **Infiltration of Legitimate Business**

Infiltration of legitimate business enter-

prise has long been the goal of organized crime nationwide. Organized crime in St. Louis is following this lead and has been channeling more and more of its time, energy and money into legitimate business.

There are some obvious, and some not so obvious, reasons for the St. Louis operators of organized crime to channel their efforts toward the control of legitimate businesses.

Like the goals on the national level, the St. Louis underworld is out to gain respectability via legitimate business. They seek a standing in the community that they would otherwise not be able to obtain.

Moreover, a legitimate business front can create a vehicle for political contributions and support which in turn leads to corruption of public officials and more insulation for organized crime from law enforcement.

The federal government has been directing much of its fight against organized crime through income tax evasion prosecutions. Because of this, legitimate business becomes a very real necessity as an outlet for illegally gained income.

The four methods generally used in gaining control of businesses such as investing concealed profits from illegal activities, accepting business interests as payment of gambling debts, foreclosing on usurious loans and using extortion — are also used in St. Louis.

An example of hoodlum penetration of a St. Louis business occurred just recently with the acquisition of the Metropolitan Towing Service by Jack Ballard, a known associate of Tony Giardano. Giardano disavows any interest in the business but nevertheless is seen there frequently. Ballard has been convicted of auto-theft offenses in the past and was a known member of an auto-theft ring.

Ironically, Metropolitan has a contract with the City of St. Louis to tow and store abandoned and illegally parked automobiles, which is done via coordination with the St. Louis Police Department.

Metropolitan was purchased by Ballard and an associate with the proceeds of a loan from a local bank secured by a pledge of another towing company's property. The second company has been under police surveillance and recently stolen auto parts were found on its premises.

St. Louis police went to Metropolitan recently seeking a man wanted for bank robbery who had been reported to them as being employed there. They requested a search of the lot for this man, but were refused their request, by **Tony Giardano,** with one of the supposed owners, Ballard, standing silently at Giardano's side! Ballard's alleged partner in the towing service company, when recently arrested, had in his possession a company check payable to Giardano.

Metropolitan Towing Company, as a legitimate outlet for salvaged parts, is a perfect tool for the organization. It gives them the desired front to account for income, and would provide an available outlet to market stolen parts and cars along with those legitimately acquired.

Another associate of Giardano is Frank James Tocco, recently convicted for planning the May 22, 1970, holdup of the Jefferson Bank and Trust Company in St. Louis. Tocco and his brothers operate a seafood distribution business, where Giardano has been observed by the St. Louis police.

Other types of business that organized crime in St. Louis has infiltrated include construction, restaurants, garment manufacturing and a variety of retail outlets.

The entry of organized crime into legitimate business . . . **shows every indication of gaining momentum!**

6. **Narcotics**

Narcotics traffic breeds violence, in the form of robbery, assault and murder. An addict, in need of a 'fix", becomes irrational and will stop at practically nothing to obtain funds with which to buy drugs.

Law enforcement officials are certain that curtailment of illegal drug sales and use would **drastically** reduce crimes committed **in all categories.**

The hard narcotics, heroin and cocaine,

that are distributed in the St. Louis area come mainly from suppliers in Chicago, New York and on the west coast. These suppliers are part of the organized crime syndicate in those locations or they are financed by organized crime funds and resources.

A recent double slaying in St. Louis in June, 1970, revealed the sheer volume of illegal drug traffic by one dealer. A search of the apartment of the slain dealer and his woman companion uncovered heroin and cocaine valued at $1.5 million. The wholesale value was set at $75,000.

It is doubtful that this dealer would have sufficient funds to make such a purchase. He would necessarily require large financial backing from an illicit organization.

7. **Loan Sharking**

The legislative committee studying the Uniform Consumer Credit Code met in St. Louis for a full public hearing on September 8, 9 and 10, 1970. Testimony at the hearings show that there is loan sharking in the St. Louis area and that this loan sharking is mainly in the black ghetto community, as far as the witnesses had been able to determine. It was pointed out to the legislative committee that very few of the people who are involved in receiving the loans are willing to complain about the loan shark. The reason given for their fail-

ure to make complaints to the proper sources is because of fear and their own well being and the desire not to destroy their source of credit.

It was pointed out that during a tight-money situation loan sharking is particularly prevalent. This condition is aggravated in states such as Missouri where relatively low legal interest rates serve to limit the availability of cash loaned by small loan companies.

No instances of direct violence were reported to the committee but it was pointed out that the fear of the individual borrowers was such that it was very doubtful they would go to law enforcement officers for assistance.

8. **Prostitution**

The MTFOC survey disclosed little evidence linking local prostitution activities with organized crime. Prostitution does exist within the St. Louis area, but in almost all instances the girls work on their own and are not controlled by any organized groups.

A large majority of the prostitutes are addicted to narcotics and turn to this illicit trade to satisfy their drug requirements. Therefore, while they may not be controlled by organized crime in pursuing their illegal occupation, organized crime may well be the reason for their entry into the field of prostitution.

B. **Kansas City**

When compared with St. Louis, Kansas City has a more active and better disciplined organized crime structure. It is reported closely associated with the Chicago Syndicate.

That this local underworld may be part of a national organization is supported by several pieces of evidence. For example, there are frequent visits made to the federal prison at Leavenworth, Kansas, by relatives and friends of inmates who are known to be members of the Syndicate throughout the nation. Kansas City is the meeting place for these visitors, who are then escorted to the federal penitentiary by Kansas City organized crime figures.

Other evidence of the national influence of the Kansas City syndicate was shown when "Nick" Civella was identified as a passenger in a taxicab on November 13, 1957, a few miles from Apalachin, New York. This was the date and location of the now-infamous meeting of underworld leaders from all over the nation. Civella is the recognized leader of the Kansas City syndicate. In October of this year, Civella and his nephew, Anthony Civella, were indicted by the federal grand jury for conspiracy in the transmission of gambling information interstate.

The Kansas City Crime Commission's report, "Hoods Who," published in April of 1970, listed 54 members of the local syndicate, their associates and places of residence. It stated that, because of pending indictments, many names had been omitted from their list. The report also stated in part:

"The Kansas City Syndicate could be described as a tightly-knit group of hoodlums at the top, which ranges down to the petty criminals who contribute so materially to its existence. There follows a group of persons who deserve to be identified with the Syndicate because of their activities in recent years.

"They have one common tie — a contribution either direct or indirect to furthering the purpose of the Syndicate. Some are clearly members of the Kansas City Syndicate, others are fellow travelers, cronies, or associates and still others are dupes of the 'Outfit.' Many are the pawns that do the bidding of the mob, who break the laws and take the risks, all to insulate 'Mr. Big' and his lieutenants from the courts."

As in other cities where there are strong organized crime elements, there are many unsolved gangland-style murders. They include: Charles Binaggio, Mary Bonomi, Jack Gregory, Louis Olivero and Mike Licausi.

Other gangland slayings include a key teamster official, Floyd R. Hayes, gunned down in a parking lot at night by two men while he was awaiting sentencing on a federal conviction; H. C. "Jack" Kennedy, a distributor of coin-operated machines, in May, 1963; Joseph Tigerman, a small-time Democratic faction leader, on Halloween night of the same year; and the car bomb killing of John Simms, Executive Secretary of the

Electrical Contractors Association, in March of 1965.

In a speech made in November, 1965, the then U.S. Attorney in Kansas City, Russell Millin, said:

"There can be little doubt that Kansas City is infected with a small but well-organized group of racketeers, who hire professional killers as casually as you or I might hire someone to cut our grass."

Millin added that the current trend was muscling in on legitimate business to create a "front" for income tax and other purposes.

Kansas City, like St. Louis, has a distinct element of "local" organized crime. It is the home of a group of four or five hoodlums who, in the past, have traveled in the midwest and southwest, to perpetrate large supermarket holdups. Authorities in Kansas City have reason to believe that this series of crimes was committed with the knowledge and consent of syndicate leaders. The group included the late Salvatore "Sam" Palma who, when murdered, was under indictment by a federal grand jury for transporting stolen property in interstate commerce. Palma's murder had all the earmarks of a typical gangland slaying and is believed to have been committed to prevent his cooperation with federal authorities.

1. Gambling

The Kansas City syndicate is no different from most others, when it comes to their

main source of revenue. Various law enforcement officials in the area have said that here, too, gambling is the number one income producer for organized crime.

As far back as 1950 a federal grand jury found gambling a $3.5 million business in Kansas City. Reportedly, there are now 14 or 15 active bookies in the metropolitan area, which includes Johnson County, Kansas, as well as the Missouri side. Recently, it was estimated by federal law enforcement officers that one bookie had taken in over $70,000 in bets over one three-day period.

Under Title III of the Omnibus Crime Control Act of 1968, periodic reports of authorized wire taps are required. One of these recent reports, dealing with a single wire tape in Kansas City, indicated a flourishing gambling operation. Of the 1,240 messages intercepted in a seven-day period, 1,228 were considered incriminating.

Since 1961, when the federal government began its nationwide drive against organized crime, there have been 56 convictions under federal gambing statutes in the Kansas City area. Most of those convicted are reported to have ties with the crime syndicate of Kansas City.

2. **Buying and Receiving Stolen Property**

According to information gathered during our survey, Kansas City has a large amount of traffic in stolen goods. In the Kansas City area, fencing is second only to gambling in

generating illegal profits for organized crime.

Drug addicts commit many crimes in order to satisfy their habits. Stealing is the most common method used to finance their addiction.

As in St. Louis and other urban centers, Kansas City drug addicts need a source to dispose of stolen property in exchange for cash to support their habits. In many cases, the organized crime element is this source.

Law enforcement officials in Kansas City are certain that, if it were possible to eliminate all these sources, thefts of all types would be drastically reduced.

3. **Infiltration of Legitimate Business**

The Kansas City syndicate has penetrated many legitimate businesses and is continuing to do so. The Kansas City Crime Commission reported 17 business establishments that are connected with organized crime in one way or another (e.g., direct ownership, partnership or source of hoodlum employment). The list of businesses includes pizzerias, drive-ins, amusement companies, cocktail lounges, a hotel, and a social club.

4. **Narcotics**

Local law enforcement officials have said that most of the hard narcotics traffic is centered in the black ghetto area.

Kansas City narcotics problems are similar to those in St. Louis and other major urban

centers. The need for large amounts of cash to support a habit drives the addict to the commission of other crimes. The result is an alarming increase in strong-armings, robbery, burglary and theft.

There seems to be some question as to the extent of control of the narcotic traffic by organized crime in Kansas City. However, it is known definitely that the drugs are imported from Chicago and California through the channels of organized crime in those areas.

C. **Outstate Missouri**

Although this Task Force found only limited organized crime activity in outstate Missouri, there are indications of increased interest by the organizations in some rural areas.

This fact is borne out by the presence of well-known St. Louis labor racketeers in southeast Missouri. Feather-bedding experienced on the $191,000,000 construction of an aluminum processing plant just south of New Madrid, in southeast Missouri, ran the cost of installing equipment to nearly three times the estimates.

An example of the featherbedding was the moving of a huge mill from a railroad spur to the plant. The distance was about half-a-mile. **This move cost more than it cost to ship the mill all the way from Europe!**

Work weeks of 58 hours were common, along with exceptionally high paychecks. A foreman for the aluminum plant project was Jimmy Michaels, Jr.

Burglaries plague the outstate area just as they do the large metropolitan areas. Many outstate law enforcement officials believe there is a connection between some of the burglaries in their territory and organized crime in the Kansas City and St. Louis areas. They give three reasons for their thinking:

(1) The technique used by burglars has been more sophisticated and it is similar to that utilized in St. Louis and Kansas City.

(2) The type of goods taken is clothing, office equipment and machinery, guns and television sets. This, plus the failure to recover any of these items outstate, indicates that stolen merchandise is being fenced through organized crime outlets in Kansas City and St. Louis.

(3) Outstate Missouri has recently experienced a wave of post office and bank burglaries. The methods used and some of the individuals apprehended leave no doubt that the gangs are moving out from the urban centers to practice their "trade." Lack of modern detection and security devices plus undermanned law enforcement agencies are the attractions for these thieves.

The actual perpetrators may not be members of the organized criminal syndicate. But their loot, in many instances, is being fenced through organized crime channels. Only an organization is capable of disposing of the large amounts of stamps and securities which comprise the loot from banks and post offices.

Many residents of outstate Missouri probably feel that organized crime "from the big cities" does not affect them. However, the burglaries and thefts mentioned above clearly indicate that the problem is reaching out to rural Missouri.

An extremely unhealthy situation in some of the rural areas was found to exist, that of "uncontrollable crime," which results when organizations of criminals are able to operate without interference because of limited local capabilities or indirect help from local law enforcement. This condition invites the type of criminal activity that is not the traditional and commonly accepted concept of organized crime, but it certainly has the same effect on the residents of the pertinent areas.

This type of crime is evidenced by continuing prostitution and gambling in the area of Fort Leonard Wood and the corruption of public officials in southeast Missouri which has led to substantial criminal activities.

III. LIMITATIONS ON PRESENT CONTROL EFFORTS

Previous efforts to curtail the growth of organized crime in Missouri have been most unsuccessful. One reason is that, although local police departments from time to time have intensified their efforts in this area, there has never been a coordinated **statewide** attack on organized crime in Missouri.

Many Missourians consider the organized crime problem a **federal** problem and think it should be controlled through federal law enforcement. However, where federal jurisdiction is lacking, it is

imperative that the state and local officials take action. It is also clear that the federal government lacks the resources to successfully investigate and prosecute many instances of organized crime.

The MTFOC strongly feels that organized crime must be fought on a **state level** as well as by the federal government. Therefore, the following analysis of the inadequacies of state and local law enforcement capabilities becomes necessary to illustrate the need for better tools to deal with organized crime.

A. Difficulties in Obtaining Proof

Organized crime, by its very nature, insulates its leaders from law enforcement. The bosses are separated by levels of command from the rank and file who commit the actual offense and who in most cases do not even know the identities of their superiors.

To further insure this insulation, members of organized crime are bound by a code of silence which demands secrecy.

Since the inception of organized crime in America, it has been virtually impossible for law enforcement authorities to penetrate or infiltrate personnel (undercover agents) into the crime syndicate, due to the ever-cautious screening exercised by the mob.

If one of their members is suspected of leaking information to the law or has placed himself into a compromising position with law authorities, he is usually eliminated in such a way that it spreads terror among any other people who may have the same idea.

Perhaps the most significant break-through in the war on organized crime has been the testimony and revelations of Joseph Valachi. **But since the very day of his decision to "talk" he has been under twenty-four hour security guard in federal prisons.**

Similarly, "victims" of organized crime really have no incentive to report any illicit operations. For example, the millions of people who gamble illegally are actually consenting customers who do not wish to see their gambling source destroyed. Victims of extortion and borrowers from loan sharks do not go to the police because they are terrified of the consequences they may have to pay. Frequent applications of torture and murder have had psychological value for organized crime, in holding down any would-be informants.

When information is given concerning the organization's activities, it is often by an informant who wishes to remain anonymous and is unwilling to testify publicly. Other informants may have such long-range value that their identity cannot be sacrificed for a public trial.

Documentary evidence in the tangible form or records is often very difficult to obtain. Bookmakers at the street level do not keep detailed records. What records are kept are extremely sketchy and most difficult to interpret. Mechanical devices have been used to prevent the telephone company from knowing about telephone calls.

Very few local law enforcement agencies

have the expertise needed to handle the more sophisticated crimes in which the underworld is now engaged.

Scientific analysts, accountants and title examiners are often required to gather and develop the evidence for a successful prosecution.

Within the past few years, some states have recognized this and have organized statewide intelligence units, **supplementing these groups with experts brought in as consultants.** Illinois, Florida, Massachusetts and New Jersey are a few of the states which have taken this step to combat the organized crime menace.

B. Lack of Resources and Manpower

The President's Commission Task Force on Organized Crime reports:

> "No state or local law enforcement agency is adequately staffed to deal successfully with the problems of breaking down criminal organization."[9]

It is a recognized fact that organized crime cases may take years of investigation followed by several more years before prosecution and appeals are finalized.

Even with the need for detailed investigations, the organized crime units of all but a few city police departments are staffed by less than ten men; only six prosecutors' offices throughout the nation have any assigned assistants to work exclusively on organized crime cases.

Intelligence units in Missouri are woefully undermanned. As recently as mid-1970 the St. Louis Police Department's intelligence unit was composed of a captain and 12 men, which was broken down into six two-men teams. This unit has recently been expanded to 18 men. The Kansas City Police Department's intelligence unit has ten men, including a captain. For St. Louis County, the comparable unit has 12 men, including a captain who is a full-time administrator, and two sergeants who are parttime administrators. Time devoted to administrative work, of course, takes away from the main objective of the unit. At this writing, the St. Louis County unit is four men short of its authorized quota.

It has been estimated that as much as 75 per cent of the man-hours of these intelligence units is spent dealing with civil disturbances, urban problems, protests and demonstrations. These men are also asked to document cases of alleged police brutality, taking more time away from their efforts to combat organized crime.

With this situation, the intelligence units of these three police departments are hard pressed to maintain needed surveillances, conduct investigations and sustain a continuing probe into illegal activities of high level members of organized crime.

Recently, the Missouri State Highway Patrol organized an intelligence unit of 27 men and a lieutenant. Plans call for two or three of these men to be assigned to each troop area to

work exclusively on criminal investigations which would include organized crime cases. However, having the whole state for their territory, and operating with only two or three men in each troop area, the task seems insurmountable at the outset.

The MTFOC firmly believes that, under the present conditions as outlined above, it is impossible to investigate and prosecute organized crime cases effectively. Furthermore, there are no prosecutors or accountants permanently assigned to work directly with these intelligence units. This leaves the responsibility for analyzing corporation papers and other legal document relating to mob-controlled companies to unqualified personnel.

Meaningful investigation and prosecution of organized crime requires extensive experience and expertise. Assistants rarely remain in the prosecutor's office for more than a few years. There is generally a high turnover rate in investigators, as well, because of transfers and promotions. Therefore, individuals who approach qualification through experience are not being retained in the field.

C. Lack of Coordination

In many cases, the intelligence units named above are hampered by their limited geographical area of operation. Gambling may range through several police territories. If only one agency is involved in the investigation, it may be unable to detect key elements of the illegal operation in a neighborhood area.

On the federal level, in most instances, intelligence information is freely exchanged between the various federal agencies and to a more limited degree between these agencies and some state and local police departments.

However, there is no central unit in Missouri which could disseminate this information for analysis and evaluation. Right now there are instances where one agency does not know what the other is doing.

IV. PROPOSALS AND RECOMMENDATIONS

After thorough analysis and evaluation of all materials and information gathered by the MTFOC, this Task Force makes the following recommendations:

1. First and foremost, that the State of Missouri establish a statewide organized crime intelligence-investigative unit, within the Attorney General's office.
2. Enactment of the following legislation
   (a) Felony Conspiracy Statute
   (b) Electronic Surveillance Statute
   (c) Witness-Immunity Statute
   (d) Loan sharking provisions of the Uniform Consumer Credit Code
   (e) Retitle the Robbery, Third Degree Statute to cover Extortion

Any discussion of proposed legislation to deal with organized crime must consider both individual privacy and justice.

In any system of penal law, neither of these values can be disregarded. Careful and informed judgments are necessary at all times in weighing **both** values.

The Task Force believes that it is in this context that various proposals to change the law must be considered.

If any significant progress is to be made to eradicate organized crime in the State of Missouri, the legal tools in the evidence-gathering process must first be strengthened, and new remedies to deal with unlawful activities must be introduced.

A. A Statewide Organized Crime Intelligence and Investigative Unit

This Task Force definitely finds a most imperative need for a statewide intelligence and investigative unit which would gather information on organized crime activities within Missouri.

The St. Louis Metropolitan Police Department, St. Louis County Police Department, Kansas City Metropolitan Police Department and the Missouri State Highway Patrol each currently has an intelligence unit. But the following two important factors have been brought out in our study:

1. There is no central unit within the State where intelligence information can be gathered, analyzed, evaluated and then presented to the appropriate officials for prosecutive action.
2. As previously explained in this report, the present State, St. Louis, St. Louis County, and Kansas City intelligence unit activities are diversified to such an extent that a coordinated program to combat organized crime is impossible. Also, the present units have no lawyers or accountants on their staff or readily available and such profes-

sionals are necessary for successful investigations and prosecutions.

The almost total absence of prosecutive action of organized crime by the prosecutors of the three local governments bears out the Task Force's finding that criminal charges against the organizations are not being presented to those offices for action.

The MTFOC's position coincides with the President's Commission Task Force, which recommended:

> "Every attorney general in states where organized crime exists should form in his office a unit of attorneys and investigators to gather information and assist in prosecution regarding this criminal activity."

The states of Illinois, Florida, Massachusetts, New Jersey and Michigan have already followed this recommendation by establishing statewide intelligence units patterned along the lines set forth in the President's Commission Task Force report.

But prior to the President's Commission Task Force — actually, **beginning many years ago — California, New York and Wisconsin had professionally organized statewide intelligence units operating against organized crime.**

The following recommendations for the organizational structure of a Missouri statewide intelligence unit are hereby made:

(1) That the Attorney General of Missouri appoint a director, holding office under a system similar to the Missouri State Highway Patrol, to

head the unit. The director would not necessarily have to be a lawyer, but should be experienced in criminal investigations. He would report directly to the Attorney General.

(2) The director and the heads of the intelligence units of the Missouri State Highway Patrol and the police departments of St. Louis, St. Louis County and Kansas City would serve as an advisory committee in that they would make policy recommendations and suggest which facets or areas of organized crime to concentrate upon. Meetings would be held once a month, during which the director would brief the committee as to progress of investigations.

(3) The director would appoint an assistant director, who would also be under a system similar to the Missouri State Highway Patrol, as would all agents.

(4) Assistant attorneys general would be assigned full time to this unit. They would give legal advice to the investigators and work closely with them in applying for search warrants and court orders. These attorneys would also analyze and evaluate cases brought in for future prosecution.

(5) Agent accountants would be assigned to the unit to help investigate the intricate financial dealings of organized crime.

(6) Agent investigators would perform much of the field work.

(7) Offices would be located in Kansas City and St. Louis with the majority of personnel working out of these offices.

(8) Agents would possess the power of peace officers of the State of Missouri and at the direction of the Attorney General shall make full and complete investigations of crimes suspected of having been committed in this State by organized criminal groups and of general criminal activity in this State.

The need for such a unit is vital. Without a statewide operating intelligence and investigative unit of the type proposed herein, any attempt to effectively combat organized criminal activities in the State of Missouri would be fruitless.

B. Proposed Legislation

1. Felony Conspiracy Statute

The accepted definition of organized crime includes the word "conspiracy." Because of the nature of organized crime, it is usually impossible to successfully prosecute the men who direct the illegal activities since, as explained several times in this report, they are far removed from the crime itself.

The "conspiracy theory" arms prosecutors with the legal weapon to uncover and present the entire picture and reach beyond the bare surface.

Most law enforcement officials feel that no other single legal tool has been as effective in attacking organized crime as the conspiracy theory. This is probably the best legal means whereby the strong door of insulation protecting top leaders of organized crime can be pried open.

There can be no doubt that when many members of organized crime conspire together, it presents to our society a challenge which is decidedly different from the law violation which is of a spontaneous nature. The conspiracy theory helps to tear down the power of that difference.

The theory of conspiracy is basically the same regardless of jurisdiction. The conspiracy constitutes a continuing crime.[10] Thus, criminal liability exists during the entire period of the criminal activity. Each co-conspirator must be aware of other co-conspirators,[11] however, he need not know their identity[12] or the exact outlines of the criminal organization.[13] **All** members of a criminal organization are equally liable for the crime of conspiracy.

Criminal liability extends to everyone in the criminal organization — no matter how close or remote their relationship to the organization is — and reaches to the leaders at the very top no matter how insulated they may be from the courts of justice.

In addition, all members of a conspiracy are liable for any offense **committed by a co-conspirator** reasonably contemplated by the conspiracy and committed in furtherance of it. Hence, the chief organizers of a criminal organization may be held responsible, **not only for the crime of conspiracy but also for substantive offenses committed by others.**

For many years the federal government has used the conspiracy theory in the prosecution of organized crime figures and the results

have been gratifying. The states of New York, California and Illinois have also been successful in the use of this theory in cases where defendants would normally be insulated from prosecution.

The present Missouri Conspiracy Statute (Section 556.120, RSMo) is a misdemeanor statute carrying one year in jail and/or a $1,000 fine as a punishment. This punishment has no relation to the object of the conspiracy and is therefore totally inadequate. As a result, the statute has seldom been used by prosecutors.

It is the recommendation of the MTFOC that the present conspiracy statutes be replaced and a statute patterned closely after the Federal Criminal conspiracy statute be adopted.

The proposed statute would make it a felony for two or more persons to conspire to commit an offense, punishable under the laws of the State of Missouri as a felony.

If the offense (object of the conspiracy) be only a misdemeanor, then the punishment for such conspiracy would not exceed the maximum punishment provided for such misdemeanor.

It is further proposed that defendants so charged under the proposed conspiracy statute be tried jointly or separately, at the discretion of the court. This provision would be similar to offenses committed under Sections 559.260, 559.270, 563.230 and 556.120 of the Missouri Revised Statutes and an amendment to Section 545.885, RSMo, is set out in the appendix to achieve this end.

2. Electronic Surveillance Statute

It is apparent to this Task Force that organized crime in the "Jet Age" cannot successfully be attacked by investigative techniques and judicial procedures designed for use in the "Horse and Buggy Age."

Because of the size and structure of organized crime, it has become imperative that law enforcement be given assistance in combating this menace to our society. In line with this philosophy, the federal government and 18 states to date have enacted electronic surveillance statutes to give their law enforcement bodies a necessary and proven method of combating organized crime. These states are:

Arizona	Nevada
Colorado	New Hampshire
Florida	New Jersey
Georgia	New York
Kansas	Oregon
Maryland	Rhode Island
Massachusetts	South Dakota
Minnesota	Washington
Nebraska	Wisconsin

In the past, the majority of successful prosecutions against individuals with organizational ties have been confined to the lower echelon, the street man, the one who actually perpetrates the technical offense. The syndicate higher ups, those who plan, organize and reap financial rewards of the illegal endeavor, have for the most part been immune to arrest and subsequent prosecution.

The explanation for this state of affairs is quite simple. The leaders of organized crime deal only with and through trusted confederates. They isolate themselves from the perpetrator by a chain of command, thereby creating a situation where tangible evidence against them is all but non-existent. Communications are either in person, at carefully selected and highly secluded sites, or by means of a telephone. The only sure and proven method of combating this mode of operation is through the very sophisticated technical devices that have been developed and used in electronic surveillance. The use of electronic surveillance is by no means confined to a fight against the leaders of organized crime. It can be every bit as effective in the breaking of a neighborhood drug or burglary ring or an area-wide fencing operation.

The mere mention of electronic surveillance legislation has in the past produced strong objections from many groups with a sincere concern for the protection of individual liberties. This Task Force is just as sincere in its belief that such legislation can be enacted in this state, as it has in others, within the provisions of the Federal Omnibus Crime Control Act of 1968 and its attending safeguards, and result in a highly effective tool to fight organized crime without infringement upon individual liberties.

As a matter of fact the proposed statute provides severe penalties against persons illegally using electronic surveillance devices. This statute will provide a new tool against

invasion of privacy which should serve as a strong deterrent against electronic spying by individuals or governmental agencies. Without these penalty provisions aimed at protecting individuals from invasion of privacy, this task force would not have recommended an electronic surveillance statute.

Since the enactment of the Federal Omnibus Crime Control Act with its attending electronic surveillance provisions (a period of less than two years), the United States Department of Justice reports it has used court-approved electronic surveillance in 133 instances, of which 121 were productive, resulting in 342 indictments.

To point out the value of electronic surveillance legislation to state officials, we cite the arrest of 29 youths and the breaking of a large drug ring in the Oshkosh, Wisconsin, area late this past summer. Wisconsin is one of the 18 states that have recently enacted legislation providing for court-approved electronic surveillance. After a preliminary investigation into the youth-dominated drug ring, state officials applied for and received permission to set up a wire tap on the phone of the alleged leaders. In only nine days, 419 telephone conversations were intercepted and of this number 250 dealt with drug traffic. With this information at hand, search and arrest warrants were secured, the 29 arrested, and the ring effectively broken.

Federal agents in the Kansas City area effectively used electronic surveillance to cause the recent indictments of Nick Civella and his nephew, Tony Civella, recognized leaders of

the Kansas City Syndicate. The investigation of interstate gambling in the Kansas City area, aided by federal wire taps, has, to date, resulted in 16 indictments. The operation appears to have extended as far as Las Vegas and included wagering on all types of sports.

As a result of a legal wire tap initiated over a twenty day period in April of 1970, 16 people were arrested in a conspiracy to violate the Federal Narcotic Laws, a murder of an informant was revealed and interrupted, and information was obtained leading to the arrest of four subjects involved in a Kansas City, Kansas, bank holdup. It was estimated the net income from the conspiracy of narcotic sales netted $10 to $20 thousand per week.

These are but a few of the great number of examples of the effective use of electronic surveillance by state and federal officials in the short period of time that it has been available to them on a court-approved basis. In evaluating the effectiveness of such surveillance in combating organized crime, it has been found that cooperation from key witnesses is more readily available from a subject confronted with the sound of his own voice than would otherwise be expected. This point was made by the late Senator Robert F. Kennedy when he was Chief Counsel for the McClellan Committee in reference to a witness who appeared before that committee: "The kind of proof makes a difference. He can say very forcibly someone's a liar — that's easy. But we have his own voice on tapes, he couldn't deny it."

In St. Louis in the past six months there have been six murders which police attribute to a power struggle within the dope-peddling organizations. Within the last three months a St. Louis County druggist was convicted and sentenced to 15 years imprisonment for his part in amphetamine and other drug trafficking. At the end of sentencing, the presiding judge indicated that this individual was one of the major sources of such drugs being circulated among the youths of St. Louis County.

It would appear reasonable to believe that a vast amount of valuable information could have been gathered by law enforcement officials through court-approved electronic surveillance in two cases. The source and supply of a major portion of the drugs infiltrating the teenagers of the St. Louis area might well have been disclosed with a few well-placed wire taps. Because of the value of court-approved electronic surveillance resulting in prevention as well as arrest and prosecution, this Task Force strongly recommends such legislation be enacted in Missouri.

The proposed electronic surveillance statute in the appendix of this report would balance the needs of law enforcement against the threat to privacy by prohibiting all unconsented interception of communication except by law enforcement agencies for the purpose of reducing and solving crime under the authorization, control and supervision of a court. Title III of the Federal Omnibus Crime Control Act of 1968 is the model for our proposed statute on wiretapping and electronic surveillance. The

federal legislation creates standards for the use of electronic surveillance which must be made a part of any state legislation.

The proposed legislation, in part, prohibits the willful, attempted or procured interception of any wire or oral communication and the use thereof by means of an electronic, mechanical or other device. Interceptions would be permitted only under court order based upon an application by state and/or local prosecuting officials. An authorized interception could be disclosed by the intercepting official only to the extent that this disclosure would be appropriate in the performance of such official or another law enforcement official's duties. In addition thereto, such information could be used in criminal prosecutions or before grand juries. Electronic surveillance would be permitted only for the purpose of gathering evidence in connection with specified crimes which are serious in nature or characteristic of organized crime.

In order to obtain court approval for electronic surveillance, a formal application must be made by a law enforcement officer to the court and must include, in part, the following information: a complete statement of facts known to the applicant including the details of the particular crime or operation involved; a description of the facility from which the communication will be intercepted; the type of communications sought to be intercepted; an identification of the individuals suspected of committing the offense and making the sought communications; a showing that other investigative techniques have been tried and failed, or are not likely to be successful or are too dangerous. In addition to the foregoing, the application must set forth a specific period of time desired for the interception and information concerning prior applications for court authorizations or interceptions of the individual or facilities involved.

Based upon the foregoing, the judge to whom the application is made must find that the subject has committed, is committing or is about to commit a crime covered by the law. The court must further find that the surveillance will produce communications related to that offense and that the individual has some control or use of the facility where the interception is to take place. Of course, the court must find the normal investigative tactics or methods have failed, will probably fail or are too dangerous. Unless all of the foregoing qualifications are shown to the satisfaction of the court, no order will be issued to permit an interception.

If the court does authorize an interception, its order must be specific as to the identity of the person, the facility and law enforcement agent or agency involved. It must describe the type of communication and crime to which it is related and specify the period of time that the interception may be conducted. The original period is placed at a maximum of 30 days but extensions may be granted if the application procedure is repeated. The court may also order progress reports on the interception if it deems advisable.

After interception has taken place and within 90 days after the end of the interception, the authorizing court must serve an inventory on the subject of the court's order stating the period covered and whether or not any communications were intercepted. Additional standards set forth in the proposed legislation would give the individual intercepted the right to challenge the interception by suppression and also give law enforcement agencies the right to appeal the denial of the application for interception. The full system of checks and balances incorporated in this legislation plus the requirement that 'any interception must be pointed towards serious' or syndicated criminal activity seems to more than meet an anticipated challenge to the proposed legislation founded upon infringement on the right of individual privacy and indiscriminate use.

The American Bar Association project on minimum standards for criminal justice, standards relating to electronic surveillance, after a thorough investigation, made the following statement:

> "To summarize, we begin with the judgment that the interest of privacy in our society demands that all private and public use of electronic surveillance techniques to overhear private communications be prohibited. Only the most compelling showing of need can justify an exception to this general principle. We believe, however, that there is a compelling social

need to enforce the penal law in the area of organized crime. There is a clear and present law enforcement need, too, to employ these techniques of investigation in this and related areas. We, therefore, find that the use of electronic surveillance techniques is necessary in the administration of justice in the area of organized crime. We come to this view from a consideration of the developments which have taken place in the nature of our society, the character of the police function today, and the structure of modern crime. The use of these techniques to get evidence of organized crime is not, we feel, the 'dirty business' rightly condemned by Mr. Justice Holmes. Such use would not be the 'unjustifiable intrustion' rightly condemned by Mr. Justice Brandeis. Given a careful articulation of appropriate standards, proper administration, and a sensitive process of review, we do not think it is too much to ask each citizen in the conduct of his daily life that he assume the risk of this limited sort of electronic surveillance in the administration of justice.

> "Our judgment, too, reflects a deep concern for privacy. Present legal rules, founded on a policy of prohibition rather than regulated use, have not been successful in controlling the

use of these techniques. A system of limited use would, we agree, 'significantly reduce the incentive for, and the incidence of improper electronic surveillance.' It is our conclusion therefore, that the only realistic alternative to the present 'intolerable' situation is to authorize a system of limited use and strict control."

The Missouri Organized Crime Task Force is in agreement with this conclusion.

3. Witness-Immunity Statute

In Missouri, at present, there is no witness-immunity statute. This means that a witness subpoenaed to appear before the Grand Jury may invoke his privilege against self-incrimination (the Fifth Amendment) and refuse to testify or to turn over books and records that have been subpoenaed.

In some instances it will be to the prosecutor's advantage to grant a witness immunity from future prosecution and in turn compel testimony that can lead to successful prosecution of others.

The states of Illinois, New Jersey, New York and California have witness-immunity statutes, as well as the federal government.

The MTFOC recommends a type of general witness-immunity statute known as a "use" type, which provides that any testimony or evidence produced by the witness after complying with the immunity section may not be used against him in a prosecution. However,

the witness can still be prosecuted by an **independent** evidence of such crime.

The proposed statute also follows the recommendation of the President's Commission Task Force, that immunity be granted only with the prior approval of the jurisdiction's chief prosecuting officer. Our proposal requires final written approval by the Attorney General in conjunction with the approval given by the local prosecuting attorney. Hence, no grant of immunity from prosecution can be made without top-level approval.

The Missouri Task Force feels certain that such approval machinery would be an effective check and balance against any "wholesale" grants of immunity.

Enactment of a general witness-immunity statute would add a valuable, meaningful weapon to the forces of law and order in their war against organized crime. Important and even key witnesses would no longer be in a position to take the "Fifth" and exit the Grand Jury room with the satisfaction of having successfully stifled the prosecution.

4. Loan Sharking Provisions of the Uniform Consumer Credit Code

The MTFOC recommends passage of the criminal provisions of the Uniform Consumer Credit Code that will be introduced to the Missouri legislature by the legislative committee on Uniform Consumer Credit. It is the understanding of the Missouri Organized Crime Task Force that the legislative committee will

make a detailed report on consumer credit and will recommend passage of both felony and misdemeanor criminal provisions aimed at loan shark activities. These provisions will supersede the present outdated usury laws now on the books in Missouri.

While there has been little publicity of loan sharking activities in Missouri, it is clear that such activities are being conducted. Undoubtedly fear of violence keeps many victims of such operations from going to law enforcement authorities. Also, the present usury statutes present little or no deterrent to the loan sharking and shylock racket.

5. **Retitle of Robbery, Third Degree Statute to Cover Extortion**

Extortion statute. Very few cases are filed under the Robbery, Third Degree statute. Yet, this statute contains the elements of the crime of extortion which is a favorite weapon of organized crime. It is felt that by more clearly stating the crime contemplated by Section 560.130, RSMo, that this tool will be more often used by law enforcement and prosecutional personnel.

STATEMENT OF OPPOSITION TO TASK FORCE RECOMMENDATION OF ELECTRONIC SURVEILLANCE AND FELONY CONSPIRACY STATUTES

I must oppose two of the legislative proposals being recommended by the Task Force Report, namely, the enactment of an Electronic Surveillance Statute and a Felony Conspiracy Statute. I find this legislation neither necessary nor desirable.

The advocates of these powerful and far-reaching statutes carry the burden of proving their need and efficacy. They have not done so to the point where I can join them in their recommendation.

The evidence is not only inconclusive as to the need for such drastic measures, but neither has their efficiency been demonstrated.

There is some indication to this member of the Task Force that where these laws have been used in the United States, organized crime has grown and flourished instead of having been brought under control.

These are broad, sweeping measures. They will encompass not just the prosecution of a relatively small number of racketeers, but all persons in the State who might in the future be accused of a wide range of misconduct.

They would impose on the people of Missouri laws that would threaten the invasion of every citizen's privacy and that would be oppressive to them, their liberty and their property — all in an effort to zero in on a few organized crime figures.

It is perhaps not coincidence that these statutes are being recommended at a time in our history when the media are publicizing crime as never before, and when

we are in the midst of social change that amounts to near revolution in some areas of our national life. Widespread fear has been generated among the people. In such times it is well to remember the words of Benjamin Franklin uttered 200 years ago:

> "Those who would give up essential liberties to purchase a little safety deserve neither liberty nor safety."

With regard to the proposed Felony Conspiracy Statute, Missouri already has in its criminal code a conspiracy statute. It provides for a punishment of one (1) year in jail and/or a $1,000 fine. The recommendation of this Task Force Report is to make conspiracy to commit crime a felony and increase the punishment to two to ten years and the fine up to $10,000.

The conspiracy theory is perhaps the most powerful tool ever designed for the prosecution of citizens. And the most oppressive. One of the witnesses who appeared before this Task Force on behalf of the proponents of these legislative measures was Mr. G. Robert Blakey, Assistant Professor of Law at Notre Dame and a consultant to the President's Commission on Law Enforcement and the Administration of Justice. Writing for the President's Task Force on Organized Crime, he conceded at the outset that " * * a dispassionate examination and analysis of its origin, development and use today leaves the feeling of uneasiness. An almost direct relation seems to exist between its present efficiency and its potential threat to individual liberty." (See Appendix C, Task Force Report on Organized Crime: President's Commission On Law Enforcement and Administration of Justice, at page 81.)

Conspiracy does not necessarily involve the commission of a crime. It is only an agreement to commit a crime.

One may be convicted of conspiracy and not be aware of others involved in the conspiracy. Nor is it necessary that he ever had any direct communication with any of them.

One can be convicted of conspiracy without ever committing the criminal act which was the object of the conspiracy, yet be held liable for a criminal act performed by another member of the conspiracy.

A person who becomes a part of a conspiracy at any time after its inception is held to have adopted the previous acts and statements of other conspirators, whether he actually knew of them or not.

And a crime committed by one conspirator in furtherance of the conspiracy is attributable to all members of the conspiracy even though they may not have been present when they were committed or knew of their commission.

Once a conspiracy has been established only slight evidence is needed to connect a person with it, such as having attended a meeting or engaged in a conversation. Rules of evidence are broad. They permit the introduction of hearsay testimony that would be excluded from the usual criminal trial.

Thus can be seen the power and effect of conspiracy prosecutions. One can be convicted of conspiracy who never committed any substantive crime, but who, through circumstantial evidence, can be shown to have associated with those who did.

This law cannot be limited to high echelon figures in organized crime. It will be applicable to all. It will be available to and utilized by the one hundred and fifteen Prosecuting Attorneys throughout the State of Missouri as a catch-all device in all types and kinds of illegal conduct.

Law enforcement people want this tool. But such a powerful weapon should not be based upon "want", but upon need.

Where is the need for this law that would make a felony of conspiracy? That would provide for up to ten years in the penitentiary. That would, upon conviction, erase a person's civil rights? It has not been demonstrated to me.

What of other states? Although requested by this member, no information has been presented as to how many of the other states have Felony Conspiracy Statutes. In Mr. Blakey's article, referred to above, there is indication that only New York, Illinois and California have such a law. This Task Force Member would like to know what their experience has been with it, as well as what other states have it and their experience, before recommending it to the people of Missouri.

Finally, and not least important, a Felony Conspiracy Statute of the breadth and scope proposed could be used in an oppressive manner against those persons in our community who espouse unpopular ideas and causes. Such a law poses a very real threat to the dissent so necessary to the maintenance of a free society.

For the Task Force Report to say that "for many years the Federal Government has used the conspiracy theory in the prosecution of organized crime figures and **the results have been gratifying",** is to ignore the fact that during these same years the profits from and activities of organized crime have increased many fold. Which in turn suggests that prosecution does not reduce crime materially and that this Task Force might well have given some attention to the causes of organized crime and how they might be eliminated.

More menacing than the Felony Conspiracy Statute, however, is the propsal to enact an Electronic Surveillance Statute. Lengthy space in the Report is devoted to arguments in support of this invasion of privacy statute.

It should be noted first that the Electronic Surveillance Statute being recommended by the Task Force Report is not limited to crimes that may be committed by illegal use of the telephone. Nor is it limited to preventing crime by obtaining information only about crimes that officers believe are about to be committed. Nor is it limited to only the offenses in which it is known that organized crime actively operates on a large scale. Nor is it, nor can it be, limited to those class of persons known as organized crime figures.

To the contrary, this proposal gives to every law enforcement officer in the State of Missouri, (and there are thousands of them), the right to apply for a wiretap "when such interception **may** provide or has provided evidence of the commission of the offense of murder, kidnapping, gambling (when the same is of an organized nature or carried on as a conspiracy in violation of the laws of this State), robbery, burglary, grand larceny, prostitution, criminal usury, abortion, bribery, extortion, dealing in narcotic drugs or other dangerous drugs, or any conspiracy to commit any violation of the laws of this State relating to the crimes specifically enumerated above." Not much is left out!

It is interesting to note that "prostitution" is included among the enumerated offenses above, although the Task Force Report states at page 24 that the Task Force survey "disclosed little evidence linking local prostitution activities with organized crime."

And as for "abortion", so far as I have been able to determine it has no ties with organized crime. The Task

Force Report does not mention it. But if there is any connection I suggest that the remedy lies in removing our antiquated, unworkable and oppressive abortion law from the statute books. That would at one stroke eliminate a cause for organized crime to realize profit, if in fact it does, and would free women in this State to exercise the freedom that is their natural right — the freedom to do with their bodies as they and their physician think best.

These two examples may be described by advocates of the measure as 'nit-picking', but they are brought out to show that this proposal is not designed to zero in only on high echelon figures involved in organized crime, but will in fact be used to investigate the entire gamut of criminal activity. It places within the reach of 115 Prosecuting Attorneys, 115 Sheriffs, and thousands of city, town and village police the opportunity to apply for permission to eavesdrop and listen in on other people's telephone conversations. It will open up a Pandora's Box.

Coupled with the Federal Electronic Surveillance Statute, now in effect, it will mean that a lot of listening to private conversations will be going on by a lot of Federal, State and Local law enforcement people throughout the State of Missouri.

In spite of this, the Task Force Report contends that such a law is indispensable to an attack on organized crime.

That argument has been admirably answered in a recent book, CRIME IN AMERICA, by Ramsey Clark, a former Attorney General of the United States. He is experienced and knowledgeable in this particular area. I shall quote from his book at various points hereafter because he says it so much better than can I, and on better authority. My views happen to coincide with his on this

topic, and were held by me prior to my reading his book.

> Is wiretapping effective in controlling organized crime?
>
> At page 288. "In several cities where organized crime is most severe, police and prosecution have in the past used wiretap without inhibition. It has not been effective. Organized crime still flourishes in these communities. In other cities where there has never been organized crime, police have never used wiretap. The massive programs required to end organized crime have no place for wiretap. It is too slow, too costly, too ineffective . .
>
> At page 289. "How will wiretap help law enforcement control organized crime * * ? Police know where numbers are sold, they know who's running the dice game, they know the prostitutes and bookies — they do not need a bug to tell them. They know the big shots, too. Most have criminal records. Their activities are knowable and known without wiretapping. If we really want to eliminate organized crime, we will not be distracted from the major effort necessary by cheap and degrading proposals to wiretap."
>
> "The more successful organized crime is, the more sophisticated its operations. Police use of electronic equipment against the capiregime of La Cosa Nostra merely causes an escalation of technology. Jamming and warning devices, codes, secure lines, voice scramblers, false leads have all been used to counteract the law. A petty game, far from the arena of criminal action

and wasting valuable time, electronic surveillance demeans law enforcement by involving it in an activity no one respects."

Proponents for wiretapping in Missouri claim that the new Federal Statute has been successfully used in prosecution of organized crime figures. Not many have been cited in the Report, but assuming it to be so, what of the many taps and interceptions that were authorized and from which no incriminating evidence was obtained. Were the convictions worth it?

According to statistical data furnished the Task Force regarding uses to which the Federal Wiretap law had been put it was found that there have been as many as 5,500 intercepts over one telephone with no incriminating information having been obtained! In one reporting period, the records showed that in Kings County, New York authorization was given **by Court order** which resulted in 24,642 intercepts of 204 persons at a total cost of $62,823.53. Out of all this only 3,398 incriminating intercepts were obtained, and this massive amount of 'listening in' resulted in only 30 persons arrested. How many of those were found to be guilty is not shown, but presumably it was less than the 30 arrested.

We must ask ourselves — is such wholesale eavesdropping of telephone conversations of citizens of this or any other state justified by a few paltry convictions — convictions that might have been obtained anyway through other methods of investigation. I say not.

Is wiretapping successful? Let me call again upon Mr. Clark.

At page 290: "The FBI used electronic surveillance in the organized crime area from at least

the late 1950's until July, 1965. Hundreds of man-years of agent time were wasted. As many as twenty bugs were used in a single city. So far as is known not one conviction resulted from any of the bugs. Scores of convictions were remanded for special hearings because persons charged with crime were overheard, but no evidence of any crime obtained by such surveillance, directly, or indirectly, was ever introduced in a Federal trial, so far as is known.

"In 1967 and 1968, without the use of any electronic surveillance, FBI convictions of organized crime and racketeering figures were several times higher than during any year before 1965. The bugs weren't necessary. Other techniques such as the strike force proved far more effective."

It must be remembered that most of the conversations that are listened to over a wiretap are conversations of citizens innocent of any wrongdoing. Once a tap is put on all conversations are monitored, including friends, relatives and acquaintances of the person whom the tap is against. There is virtually no limit to whose conversations might be monitored by a wiretap.

Then there is the very real spectre of the law enforcement officer who uses all of this information for the wrong reasons. Humans being human, possession of such private and secret information has proved to be too much for many an individual.

Perhaps the point dwelt on most at length and most firmly by the proponents has to do with the fact that a wiretap cannot be placed on a telephone unless a judge

first approves the application. Does that really afford us protection?

It is doubtful that the requirement of obtaining court orders will eliminate the risk of abuse or mistake. The history of court approval in New York City reveals a lack of judicial consideration of applications. Rubber stamp approval of bail and search warrants is common in the courts of this country.

The opportunity that a judge has to make an intelligent decision is limited. The police and the prosecutor present the application and ordinarily the judge knows little, if anything, about the individuals involved except what the police allege.

It is reasonable to assume that some judges would probably give automatic approval to applications presented them under this law.

As has been mentioned, there is now in effect and use a Federal Electronic Surveillance Statute. It was designed and passed to combat organized crime. It is the Federal Government that has the jurisdictional authority to best cope with and fight the high-powered, well financed interstate organized crime syndicate.

I believe it was Mr. Justice Holmes who characterized eavesdropping as a "dirty business". Absent the most compelling and critical need, we should not debase the majesty of government by authorizing its employees to engage in such enterprises. I am convinced no such compelling or critical need exists that warrants wiretapping in Missouri at the state and local level.

F. RUSSELL MILLIN
Task Force Member

APPENDIX

APPENDIX

A

CREATION OF A STATEWIDE ORGANIZED CRIME INTELLIGENCE AND INVESTIGATIVE UNIT

AN ACT

Relating to a Missouri intelligence and investigaiton division of the attorney general's office.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section 1. There is hereby created, under the jurisdiction of the attorney general, a division to be known as the Missouri Intelligence and Investigation Division. The division shall consist of one director appointed by the attorney general with the advice and consent of the senate, who shall be experienced in the field of criminal investigation and who shall hold office at the pleasure of the attorney general; an assistant director appointed by the director; and not more than twenty agents who are trained in criminal investigative matters. Necessary clerical and secretarial help shall be employed by the director. One-half of the agents, exclusive of the director and assistant director, shall be members of and affiliated with the political party casting the highest number of votes in the state for governor at the last preceding state election, and one-half of the agents, exclusive of the director and assistant director, shall be members of and affiliated with the political party casting the next highest number of votes in this state for governor at the last preceding state election. The division shall also employ agent accountants skilled in investigating corporate business and security matters. No person shall be appointed as director or assistant director, or as an agent, who has been convicted of a felony.

2. The compensation of the director, assistant director, agents and other employees of the division shall be set by the attorney general within the limits of the appropriation made for that purpose.

Section 2. The director and assistant director, with

the assistance and cooperation of the attorney general, shall develop testing procedures to determine the fitness of candidates for an appointment to the division.

Section 3. A field office of the division shall be permanently located in each of the two largest metropolitan areas of this state.

Section 4. The director, assistant director, and each agent of the division shall subscribe to an oath to faithfully demean himself in office, as is required for other public officials.

Section 5. The Missouri intelligence and investigation division of the attorney general's office shall make full and complete investigations of crimes suspected of having been committed in this state by organized criminal groups, and of general criminal activity in this state at the direction of the attorney general.

Section 6. Each agent of the division shall be a peace officer of this state and shall possess all the powers and privileges possessed by other peace officers throughout the state of Missouri.

Section 7. The division shall acquire, collect, classify and preserve criminal identification and other crime records relating to organized crime activities.

Section 8. Reports of all investigations made by the members of the division shall be made to the attorney general.

Section 9. If the person appointed as director or assistant director of the division was an agent of the division at the time of his appointment as director or assistant director, he shall, upon the expiration of his term as director or assistant director, be returned to the same position he held at the time of his appointment as director or assistant director. If such position is filled at the time, a temporary additional position shall be created for him until such time as a vacancy exists in the position.

APPENDIX

B

BILLS PROPOSING FELONY CONSPIRACY STATUTES

AN ACT

To repeal section 556.120, RSMo 1959, relating to the crime of conspiracy and to enact in lieu thereof one new section, relating to the same subject, with penalty provisions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section 1. Section 556.120, RSMo 1959, is repealed and one new section enacted in lieu thereof, to be known as section 556.120, to read as follows:

556.120. If two or more persons conspire to commit any offense punishable under the laws of the state of Missouri, and one or more of such persons does any act to effect the object of the conspiracy, each shall be guilty of a felony, and upon conviction thereon shall be imprisoned by the department of corrections for not less than two nor more than ten years, or fined not more than ten thousand dollars, or by both such fine and imprisonment, provided, however, that if the offense which is the object of the conspiracy is a misdemeanor only, the punishment for the conspiracy shall not exceed the maximum punishment provided for the misdemeanor.

(556.120. If you or more persons shall agree, conspire, combine or confederate: First, to commit any offense; or, second, falsely or maliciously to indict another for any offense, or procure another to be charged or arrested for any offense; or, third, falsely or maliciously to move or maintain any suit; or, fourth, to cheat and defraud any person of any money or property, by means which are in themselves criminal; or, fifth, to cheat, and

defraud any person of any money or property by any means which, if executed, would amount to a cheat, or to obtaining money or property by false pretenses; or, sixth, to commit any act injurious to the public health or public morals, or for the perversion or obstruction of justice, or the due administration of the laws, they shall be deemed guilty of a misdemeanor.

*Section 545.885. Separate trials, exceptions.

1. When two or more defendants are jointly charged with an offense under sections 559.260, 559.270, 563.230 or **556.120**, RSMo, they shall be tried jointly or separately in the discretion of the court; except that if there is evidence that would be admissable against one defendant, but inadmissible as to the defendants if all are tried jointly, the defendant against whom the evidence is admissible, upon timely motion made by any other defendant against whom the evidence is inadmissible, shall be tried separately.

Each defendant tried jointly under this section shall be entitled to peremptory challenges as set out in section 46.180.

2. The word "evidence" as used in this section shall not be construed to include evidence as to character or reputation.

*It is proposed that the above section be amended by adding proposed section 556.120.

APPENDIX

C

ELECTRONIC SURVEILLANCE STATUTE

PROPOSED MISSOURI STATUTE

WIRE INTERCEPTION AND INTERCEPTION OF

ORAL COMMUNICATIONS

Sec.

Section 1. Definitions.
As used in this chapter.

(1) "wire communication" means any communications made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate or foreign communications;

(2) "oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation;

(3) "intercept" means the aural acquisition of the contents of any wire or oral communication through the use of any electronic, mechanical, or other device.

(4) "electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire or oral communication other than —

(a) "any telephone or telegraph instrument, equipment or facility, or any component thereof, (i) furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business; or (ii) being used by a communications common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties.

(b) "a hearing aid or similar device being used to correct subnormal hearing to not better than normal;

(5) "person" means any employee, or agent of the State or political subdivision thereof, and any individual, partnership, association, joint stock company, trust or corporation;

(6) "investigative or law enforcement officer" means any officer of the State or political subdivision thereof, who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this chapter, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses;

(7) "contents", when used with respect to any wire or oral communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication;

(8) "Judge of competent jurisdiction" means —

(a) a judge of the Missouri Supreme Court or a Court of Appeals Judge, or a Missouri Circuit Judge having felony jurisdiction.

(9) "aggrieved person" means a person who was a party to any intercepted wire or oral communication or a person against whom the interception was directed.

§ 2. Interception and disclosure of wire or oral communications prohibited.

(1) Except as otherwise specifically provided in this chapter, any person who—

(a) wilfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire or oral communication;

(b) wilfully uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when—

(i) such device is affixed to, or otherwise transmits a signal through, a wire, a cable, or other like connection used in wire communications; or

(ii) such device transmits communications by radio, or interferes with the transmission of such communication; or

(c) wilfully discloses, or endeavors to disclose, to any other persons the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this subsection; or

(d) wilfully uses, or endeavors to use, the contents of any wire or oral communication, knowing or having full reason to know that the information was obtained through the interception of a wire or oral communication in violation of this subsection;

shall be guilty of a felony and shall be punished by imprisonment in the penitentiary for a term of not less than 2 years, nor more than 5 years, or by a fine of not more than $10,000 or by both the fine and confinement.

(2) (a) It shall not be unlawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of any communication common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the carrier of such communication:

Provided, That said communication common carriers shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

(b) It shall not be unlawful under this chapter for the person acting under color of law to intercept a wire or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

(c) It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire or oral communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal act.

§ 3. Manufacture, distribution, possession, and advertising of wire or oral communication intercepting devices prohibited.

Except as otherwise specifically provided in this section any person who:

a. Wilfully possesses an intercepting device, the design of which renders it primarily useful for the purpose of the surreptitious interception of a wire or oral communication;

b. Wilfully sells an intercepting device, the design of which renders it primarily useful for the purpose of the surreptitious intercepting of a wire or oral communication;

c. Wilfully distributes an intercepting device, the design of which renders it primarily useful for the purpose of the surreptitious interception of a wire or oral communication; or

e. Wilfully places in any newspaper, magazine, handbill, or other publication any advertisement of any intercepting device, the design of which renders it primarily useful for the purpose of the surreptitious interception of a wire or oral communication or of any intercepting device where such advertisement promotes the use of such device for the purpose of the surreptitious interception of a wire or oral communication;

shall be guilty of a felony and shall be punished by imprisonment in the penitentiary for a term of not less than 2 years nor more than 5 years, or by confinement in the county jail for a term of not more than 1 year, or by a fine of not more than $1,000 or by both the fine and confinement.

It shall not be unlawful under this act for:

a. A communication common carrier or an officer, agent or employee of, or a person under contract with a communication common carrier, in the usual course of the communication common carrier's business; or

b. A person under contract with the United States, a state or a political subdivision thereof, or as officer, agent,

or employee of a state or a political subdivision thereof; to possess, sell, distribute, manufacture or assemble, or advertise any intercepting device, while active in furtherance of the appropriate activities of the United States, a state or a political subdivision thereof or a communication common carrier.

Any intercepting device possessed, used, sent, distributed, manufactured, or assembled in violation of this act is hereby declared to be a nuisance and may be seized and forfeited to the State.

§ 4. Prohibition of use as evidence of intercepted wire or oral communications.

Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the State, or a political subdivision thereof if the disclosure of that information would be in violation of this chapter.

§ 5. Authorization for interception of wire or oral communications.

(1) The Attorney General, or any Assistant Attorney General specially designated by the Attorney General or any County Prosecutor, may authorize an application to a judge of competent jurisdiction for, and such judge may grant in conformity with section 7 of this chapter an order authorizing or approving the interception of wire or oral communications by the **Missouri Intelligence and Investigative Division,** or any law enforcement agency of this State or any political subdivision thereof having responsibility for the investigation of the offense as to which the application is made, when such interception may

provide or has provided evidence of the commission of the offense of murder, kidnapping, gambling (when the same is of an organized nature or carried on as a conspiracy in violation of the laws of this State), robbery, burglary, grand larceny, buying and receiving stolen property, prostitution, criminal usury, abortion, bribery, extortion, dealing in narcotic drugs or other dangerous drugs, or any conspiracy to commit any violation of the laws of this State relating to the crimes specifically enumerated above.

§ 6. Authorization for disclosure and use of intercepted wire or oral communications.

(1) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(2) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire or oral communication or evidence derived therefrom may use such contents to the extent such use is appropriate to the proper performance of his official duties.

(3) Any person who has received, by any means authorized by this chapter, any information concerning a wire or oral communication, or evidence derived therefrom intercepted in accordance with the provisions of this chapter may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any criminal proceeding in any

court of the State or in any grand jury proceeding if such testimony is otherwise admissible.

(4) No otherwise privileged wire or oral communication intercepted in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character.

(5) When an investigative or law enforcement officer, while engaged in intercepting wire or oral communications in the manner authorized herein, intercepts wire or oral communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subsections (1) and (2) of this section. Such contents and any evidence derived therefrom may be used under subsection (3) of this section when authorized or approved by a judge of competent jurisdiction where such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this chapter. Such application shall be made as soon as practicable.

§ 7. Procedure for interception of wire or oral communications.

(1) Each application for an order authorizing or approving the interception of a wire or oral communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

(a) the identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;

(b) a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including (1) details as to the particular offense that has been; is being, or is about to be committed, (ii) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) a statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire or oral communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each such application; and

(f) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(2) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(3) Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire or oral communications within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines on the basis of the facts submitted by the applicant that —

(a) there is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in section 5 of this chapter; (b) there is probable cause for belief that particular communications concerning that offense will be obtained through such interception; (c) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;
(d) there is probable cause for belief that the facilities from which, or the place where, the wire or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

(4) Each order authorizing or approving the interception of any wire or oral communications shall specify—

(a) the identity of the person, if known, whose communications are to be intercepted;

(b) the nature and location of the communications

facilities as to which, or the place where, authority to intercept is granted;

(c) a particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;

(d) the identity of the agency authorized to intercept the communications, and of the person authorizing the application; and

(e) the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

(5) No order entered under this section may authorize or approve the interception of any wire or oral communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than thirty days. Extensions of an order may be granted, but only upon application for an extension made in accordance with subsection (1) of this section and the court making the findings required by subsection (3) of this section. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or in any event in thirty days.

(6) Whenever an order authorizing interception is entered pursuant to this chapter, the order may require

reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge may require.

(7) Notwithstanding any other provision of this chapter, the Attorney General or any County Prosecutor, who reasonably determines that —

(a) an emergency situation exists with respect to conspiratorial activities characteristic of organized crime that requires a wire or oral communication to be intercepted before an order authorizing such interception can with due diligence be obtained, and

(b) there are grounds upon which an order could be entered under this chapter to authorize such interception, may intercept such wire or oral communication if an application for an order approving the interception is made in accordance with this section within forty-eight hours after the interception has occurred, or begins to occur. In the absence of an order, such interception shall immediately terminate when the communication sought is obtained or when the application for such an order is denied, whichever is earlier. In the event such application for approval is denied, or in any other case where the interception is terminated without an order having been issued, the contents of any wire or oral communication intercepted shall be treated as having been obtained in violation of this chapter, and an inventory shall be served as provided for in subsection 8 (d) of this section on the person named in the application.

(8) (a) The contents of any wire or oral communication intercepted by any means authorized by this

chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire or oral communication under this subsection shall be done in such way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under his direction. Custody of the recordings shall be whenever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for ten years. Duplicate records may be made for use or disclosure pursuant to the provisions of subsections (1) and (2) of section 6 of this chapter for investigations. The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire or oral communication or evidence derived therefrom under subsection (3) of section 6.

(b) Applications made and orders granted under this chapter shall be sealed by the judge. Custody of the applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for ten years.

(c) Any violation of the provisions of this subsection may be punished as contempt of the issuing or denying judge.

(d) Within a reasonable time but not later than ninety days after the filing of an application for an order of approval under section 7, subsection 7 (b),

which is denied or the termination of the period of an order or extensions thereof, the issuing or denying judge shall cause to be served, on the persons named in the order or the application, and such other parties to intercepted communications as the judge may determine in his discretion that is in the interest of justice, an inventory which shall include notice of —

(1) the fact of the entry of the order or the application;

(2) the date of the entry and the period of authorized, approved or disapproved interception, or the denial of the application; and

(3) the fact that during the period wire or oral communications were or were not intercepted. The judge, upon the filing of a motion, may in his discretion make available to such person or his counsel for inspection such portions of the intercepted communications, applications and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of competent jurisdiction the serving of the inventory required by this subsection may be postponed.

(1) The contents of any intercepted wire or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceedings in a Federal or State court unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This ten-day period may be waived by the judge if he finds that it was not possible to furnish the party with the

above information ten days before the trial, hearing, or proceeding and that party will not be prejudiced by the delay in receiving such information.

(10) (a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State or a political subdivision thereof, may move to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom, on the grounds that —

(i) the communication was unlawfully intercepted;

(ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or

(iii) the interception was not made in conformity with the order of authorization or approval.

Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion, or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire or oral communication or evidence derived therefrom, shall be treated as having been obtained in violation of this chapter. The judge, upon the filing of such motion by the aggrieved person, may in his discretion make available to the aggrieved person or his counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice.

(b) In addition to any other right to appeal, the State shall have the right to appeal from an order granting a motion to suppress made under paragraph (2) of this subsection, or the denial of an application for an order of approval, if the Attorney General or Prosecutor shall certify to the judge or other official granting such motion or denying such application

that the appeal is not taken for purposes of delay. Such appeal shall be taken within thirty days after the date the order was entered and shall be diligently prosecuted.

§ 8. Reports concerning intercepted wire or oral communications.

Within 30 days after the expiration of an order or an extension or renewal thereof entered under this act or the denial of an order confirming verbal approval of interception, the issuing or denying judge shall make a report to the Chief Justice of the Supreme Court, stating that:

(a) An order, extension or renewal was applied for;

(b) The kind of order applied for;

(c) The order was granted as applied for, was modified, or was denied;

(d) The period of the interceptions authorized by the order, and the number and duration of any extensions or renewals of the order;

(e) The offense specified in the order, or extension or renewal of an order;

(f) The identity of the person authorizing the application and of the investigative or law enforcement officer and agency for whom it was made; and

(g) The character of the facilities from which or the place where the communications were to be intercepted.

In addition to reports required to be made by applicants pursuant to Federal law, all judges authorized to issue orders pursuant to this act shall make annual reports on the operation of this act to the Chief Justice of the Supreme Court. The reports by the judges shall contain (1) the number of applications made; (2) the number of orders issued; (3) the effective periods of such orders; (4) the number and duration of any renewals thereof; (5) the crimes in connection with which the conversations were sought; (6) the names of the applicants; and (7) such other further particulars as the Chief Justice of the Supreme Court may require.

The Chief Justice of the Supreme Court shall annually report to the Governor and the Legislature on such aspects of the operation of this act as he deems appropriate, including any recommendations he may care to make as to legislative changes or improvements to effectuate the purposes of this act and to assure and protect individual rights.

§ 9. Recovery of civil damages authorized.

Any person whose wire or oral communication is intercepted, disclosed, or used in violation of this chapter shall (1) have a civil cause of action against any person who intercepts, discloses, or uses, or procures any other person to intercept, disclose, or use such communications, and shall be entitled to recover from any such person —

(a) actual damages but not less than liquidated damages computed at the rate of $100 a day for each day of violation or $1,000, whichever is higher;

(b) punitive damages; and

(c) a reasonable attorney's fee and other litigation costs reasonably incurred.

A good faith reliance on a court order or on the provisions of section 7, subsection (7) of this chapter shall constitute a complete defense to any civil or criminal action brought under this chapter.

APPENDIX

D

WITNESS-IMMUNITY STATUTE

WITNESSES — COMPELLING TESTIMONY — IMMUNITY

An Act providing for the compelling of evidence from certain persons in criminal proceedings and for the granting of immunity to such persons from the use of such evidence against them in certain cases.

BE IT ENACTED BY THE SENATE AND GENERAL ASSEMBLY OF THE STATE OF MISSOURI:

1. In any criminal proceeding before a court or grand jury, if a person refuses to answer a question or produce evidence of any other kind on the ground that he may be incriminated thereby, and if the Attorney General or the County Prosecutor, in writing, requests the court to order that person to answer the question or produce the evidence, the court shall so order and that person shall comply with the order. After complying and, if but for this section, he would have been privileged to withhold the answer given or the evidence produced by him, such testimony or evidence may not be used against the person in any proceeding or prosecution for a crime or offense concerning which he gave answer or produced evidence under court order. However, he may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing or contempt committed in answering, or failing to answer, or in producing, or failing to produce evidence in accordance with the order. If a person refuses to testify after being granted immunity from prosecution and after being ordered to testify as aforesaid, he may be adjudged in contempt and committed to the county jail until such time as he purges himself of contempt by testifying as ordered without regard to the expiration of the grand jury; provided, however, that if the grand jury before which he was ordered to testify has been dissolved, he may then purge himself by testifying before the court.

FOOTNOTES

1. G. Robert Blakey, Chief Counsel, U.S. Senate Committee on the Judiciary Sub-Committee on Criminal Laws and Procedures.
2. Johnson, Organized Crime: Challenge to the American Legal System (Pts. 1-3), 53 J. Crim. L., C.P.S. 339, 02-404 (1962), 54 J. Crim. L., and P.S. 1,127)1963).
3. Kefauver Comm. 2d Interim Rep., S. Rep. No. 141, 82d Cong., 1st Sess. 11 (1951).
4. Johnson, **supra**, note 2 at 402.
5. Johnson, **supra**, note 2, at 403.
6. N.Y. Temporary Comm. of Investigation, the Loan Shark, Report 17 (1965).
7. For a detailed examination of labor racketeering, see McClellan, Labor-Mgt. Reps., 1st Interim Rep., S. Rep. No. 1417, 85th Cong., 2d Sess. (1958), 2d Interim Rep. (Pts. 1 and 2), S. Rep. No. 621, 86th Cong., 1st Sess. (1959), Final Rep. (Pts 1 through 4), S. Rep. No. 1139, 86th Cong., 2d Sess. (1960).
8. "The Conglomerate of Crime," Time, August 22, 1969, Vol. 94, pp. 17-27.
9. The President's Commission on Law Enforcement and Administration of Justice, Task Force Report on Organized Crime, p. 14.
10. Hyde v. United States, 225 U.S. 347, 369 (1912).
11. United States v. Falcone, 311 U.S. 205 (1940).
12. Blumental v. United States, 332 U.S. 539, 557-558 (1947).
13. People v. Cornell, 118 Cal. App. 2d 668, 10 Cal. Rptr. 717 (1961).